IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.108 OF 2006

Mrs.Mangala Sudhakar Deshmukh .. Appellant

Versus

Pune Municipal Corporation & Ors.. Respondents

Mr.Prathamesh Bhargude for appellant

Mr.Pethe for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd August 2007.

P.C.

. The only contention raised before me by Mr.Bhargude is that the courts below have misconstrued and misinterpreted most relevant

documents viz., the permission granted by the Corporation for construction. He submits that the permission is for construction and the construction is to be carried out within the period stipulated i.e. 11 months and that by no stretch of imagination, the same can be considered as a permission to construct a structure which would remain on the land for 11 months only. This assumption which has no basis from the contents of the development permission, therefore, falsifies and vitiates the ultimate conclusion. Appellant's suit could not have been dismissed in these circumstances and, therefore, a substantial question of law would arise for consideration of this Court.

2. With the assistance of both sides, I have perused the judgements and orders of the Court below and the development permission granted in favour of the appellant. From a bare reading of this permission, which is traceable to the powers

conferred upon the Commissioner vide Appendix -Q to the D.C.Rules for Pune City, it is apparent that temporary permission for structures or users otherwise permissible as per the development plan zoning is what is contemplated by the said Appendix. Sub-clause A therein speaks of the types of structures which may be considered for grant of temporary permission. Item No.8 is entitled MAFCO Stores, Milk Booths and such other types of stalls etc. The said Appendix reads thus:-

> ". The Commissioner may exercise to grant temporary permissions for structures or for users otherwise permissible as per Development Plan Zoning.
>
> A. The following types of structures may be considered for grant of temporary permission:-

1. Monsoon permission for a period of four months from 1st June to 30th September every year either for protection from rain or covering of the terrace to protect from rain during the monsoon only.

2. Pendals allowed for various fairs, ceremonies, religious functions etc.

3. Structures for godown/storage, temporary site office only during construction work;

4. Temporary exhibition/circus etc.

5. Watchman’s chowky constructed for protection of land;

6. Storage of important machinery in case of factories in industrial land before installation etc.

7. Structures for ancillary work for quarrying in conforming zone;

8. MAFCO Stalls, Milk booths and such other type of stalls etc.

9. Transit accommodation for

persons to be rehabilitated during construction period;

10. No such permission should be granted for a period of more than one year at a time and for an aggregate period of more than three years for (3), (5), (6), (7), (8) and (9).

It is desirable to grant permission for construction of structures on a permanent basis if F.S.I. is available instead of continuing temporary permission from year to year.

3. I have perused this appendix in the backdrop the subject permission, original of which is in Marathi. It is clear that it is a temporary permission for erection/construction of a structure. This permission itself is for eleven months. It cannot be construed as a permission for construction of a permanent structure with a condition that the construction must commence within the period of eleven months.

The nature of construction and the permission sought being traceable to Appendix -Q, it is clear that the permission itself was to remain in force for eleven months. After this period if the permission is not continued or renewed, then, the structure is required to be removed or pulled down. This is on the basis that it is unauthorised. The types of structures which are enumerated in Appendix - Q would demonstrate the intent of the framers of the D.C. Rules. These are structures which can be constructed pursuant to the temporary permission. There are certain users contemplated for temporary period under Appendix - Q. The intent is clear and that is to enable the residents, in emergent situation so also in monsoons and during festivals, to put up structures temporarily. In the absence of the permission, the structure would be clearly unauthorised.

4. In the facts and circumstances of this

case, there is a concurrent finding that under the garb of Temporary permission, construction was made which was not removed despite the expiry of the period stipulated in the permission and, therefore, the first notice was issued and the structure was demolished. In fact, the structure was demolished on two occasions. The construction permission provided for the site at which the construction can be raised, whereas the construction was made at a different place/spot. The lower appellate court has referred to all these facts and the application made by the predecessor of the present appellant. It held that the permission being such, the demolition action proposed cannot be questioned. The lower appellate court and the trial court have referred to the proceedings in Regular Civil Suit No.851 of 1994 and the pleadings therein. They have also relied on the licence and other relevant documents. In such circumstances, I do not find that any substantial question of law would arise

much less of interpreting the contents of the subject permission. This is a clear case, where despite earlier demolitions, the appellant went on constructing at site and that is how he was disentitled for the relief that was claimed.

5. The second appeal is, therefore, devoid of any merits and is accordingly dismissed.

6. However, dismissal of the second appeal and vacating of ad-interim order would not prevent the appellant from applying to the Corporation for regularising the said structure and if such an application is made, the Corporation shall consider the same in accordance with the prevalent policies. At the request of learned Advocate for appellant and to enable him to apply for regularising the structure, ad-interim order to continue for a period of Ten days from the date of receipt of this order by the Corporation.

(S.C.DHARMADHIKARI, J)